

Beyond the Beltway

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Beyond The Beltway (BYB), NASDDDS bi-weekly electronic bulletin series, covers state policy and program initiatives of special interest to member state agencies. If you have any news to share for ***BYB***, please contact me at klebeau@nasddds.org or (703) 683-4202.

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Wisconsin Lawsuit to Block Facility Downsizing is Settled

A class-action lawsuit filed by guardians of Northern Wisconsin Center (NWC) residents, who sought to block the state's plan to downsize the center, has been settled. Judge Maryann Sumi approved the settlement on August 2.

The long-term care center will still be closed, but the deadline for transiting residents to other homes has been postponed from December 31, 2004 to June 30, 2005. The agreement requires the state to consult with guardians in developing service alternatives for NWC residents and the extra time facilitates finding appropriate alternative living arrangements for the residents. Wisconsin's Department of Health and Family Services, however, intends to "hold to the December 31, 2004 deadline as much as we can and we anticipate that only a few people will not have moved out by then," said Mary Green, a Developmental Disabilities Integration Services Planning Manager. NWC is expanding services and adding 10 beds to its 20-bed short-term intensive treatment center for individuals with "complex needs," such as persons with developmental disabilities and mental health issues.

Agreement Terms. The agreement reiterated that the Wisconsin legislature has authorized funding for up to 20 beds to accommodate residents in the long-term care program who may not have found new homes by December 31, 2004. The agreement also commits increased funds for the state's Community Integration Program (or CIP-1A home- and community-based waiver program) that provides Medicaid waiver services to residents in any of the state's three developmental centers who wish to move to a community setting.

Funding for the 2005-2007 biennial budget will be sought from the legislature, the agreement said, to support residents whose transition plans are not yet adequate, but this should not be interpreted as "open-ended" commitment to keeping the long-term care center open for the 2005-07 biennium. This part of the agreement provides "a safety net if we absolutely have to go to the legislature," Green explained. "The intent of those who drafted the agreement is that long-term care will conclude by June 30, 2005 or sooner."

Under another provision of the agreement, guardians of NWC residents agreed not to engage in unreasonable withholding of consent to access information (as some of them have been doing) so that county, care management organization, and prospective provider staff can make appropriate needs assessments for each resident and develop placement plans. Guardians also have agreed not to "withhold consent to suitable relocation plans" and to "work cooperatively" with involved staff.

"I assume the plaintiffs settled for extending the closing process because their attorney recognized they were not going to win on the legal merits of the case," said Wisconsin Coalition for Advocacy attorney Mitch Hagopian, who represented WCA in the lawsuit. "The settlement will result in all of the plaintiffs' claims being dismissed with prejudice, meaning that they cannot be brought again in another lawsuit." WCA, a private, independent, nonprofit agency chosen by the governor to protect and advocate for individuals with disabilities throughout Wisconsin, will remain closely involved in the closing of the center.

Background. By 2003, efforts to close any of Wisconsin's three developmental centers had largely stagnated. When the new governor, Jim Doyle, assumed office in January of 2003, the issue of closing the centers came up again and, on February 18, the governor and Health and Family Services Secretary Helene Nelson announced plans to downsize Northern Wisconsin Center in Chippewa Falls. NWC was the first candidate for downsizing because it had the fewest number of residents and the highest daily Medicaid per diem rate of the three centers. While advocates and even a former NWC resident, who had moved into a community setting, praised the initiative, local reaction was ballistic and many parents of center residents were adamantly opposed. In June, five parents of residents filed a lawsuit against the state ostensibly over health and safety concerns; the suit later ballooned to class action status with guardians of 145 residents joining the suit.

There was virtually no legal merit to any of the claims originally made by the plaintiffs," said Mitch Hagopian. "Simply put, there is no law state or federal which requires a state to stay in the business of providing institutional services. On the other hand, there are strong legal mandates the Americans with Disabilities Act and the Wisconsin Protective Placement statute to name two which require the state to vigorously explore alternatives to institutional placement."

Progress to Date. So far, three residents have chosen to live in private or county ICF/MRs and 50 have chosen to live in a community setting funded through the CIP-1A waiver program. The guardians of those 50 residents are very satisfied. "The feedback is pretty positive that their health and safety needs are being met," Green said. "Things are turning out very well." One father of twins who were living at the center and now are in the community said: "We wish we'd done this 20 years ago."

FMI: To read the settlement agreement, go to <http://www.nasddds.org/pdf/NWC%20Settlement.pdf>. To learn more about the Wisconsin Coalition for Advocacy, go to <http://www.w-c-a.org>. To see what's new in Wisconsin's Developmental Disabilities Services and Programs, go to <http://www.dhfs.state.wi.us/bdds/index.htm>.

Ohio Governor Reaffirms Decision to Close Two Centers

Ohio Governor Bob Taft announced July 2 that he has accepted the Mental Retardation and Developmental Disabilities Facility Closure Commission's recommendation to close Apple Creek Developmental Center by June 30, 2006 and Springview Developmental Center by June 30, 2005. The announcement reaffirmed last year's decision to shut down the two state centers following efforts by opponents to block the closure.

The governor, however, imposed two conditions on closing the centers. First, the state must accommodate residents' first or second choice for a new home; and, second, Apple Creek and Springview residents will be moved no more than once to attain their first or second choice of alternative placement.

"Our highest priority is to protect the health and safety of the residents leaving the centers to be closed and we will do nothing to jeopardize that commitment," Taft said. "I have charged director [Kenneth] Ritchey with providing the proper oversight to ensure none of these vulnerable citizens will face unnecessary risk." Ritchey is the director of the Ohio Department of Retardation and Developmental Disabilities (ODMRDD).

The centers' residents will select their first, second, and third placement choices from the following options:

- (1) Receive a Medicaid waiver to move into a community setting;
- (2) Move to a public (county or city-run) intermediate care facility;
- (3) Move to a privately operated intermediate care facility; or
- (4) Relocate to another state-run developmental center (there will be 10 left in Ohio when the two centers are shut down).

"Ohio is committed to eventually fulfilling everyone's first choice," said Robert Jennings, ODMRDD's public information manager. "Some centers may not have vacancies today, but as we get closer to the closure dates of 2005 and 2006, it is our hope that everyone will be able to have their first choice." About 50 percent of the residents want to move to other state-run developmental centers, 31 percent prefer to receive the waiver to move into a community setting, and 19 percent would rather move into an intermediate care facility. "But as they get closer to the actual move," Jennings said, "more people are showing interest in the waiver."

Background. In 2003, Taft announced plans to close the Springview and Apple Creek facilities to help balance the state's budget. While Springview serves fewer residents than any of the other 11 state-run MR facilities in the state and has the oldest buildings, its average per resident cost at \$371.12 per day is the highest of all the state's centers. Apple Creek, which has a larger number

of residents, costs \$364.29 per resident per day to operate. Ohioans receiving Medicaid home and community-based waiver services, in comparison, cost on average \$119.50 a day to serve.

The governor couldn't implement his closure plans immediately, however, because of a new law (Senate Bill 178) enacted by the Ohio Legislature that required an independent review by the Legislative Service Commission (LSC) and the recommendations of a facility closure commission before closing the two facilities. Taking into consideration the LSC's feasibility and impact study and the closure commission's recommendations that were both completed in the spring, Taft was able to reach a final decision and give ODMRDD a green light to proceed with the closure initiative.

The closings also bring Ohio in line with the goals of the Ohio Access Report, the governor's strategic plan for long-term care reform for individuals with disabilities. According to the report, the number of Ohioans being served in home and community settings through the MR/DD system has increased since 2001 by 76 percent.

"The trend is toward care in community-based settings," Taft said. "Our system needs to transition to accommodate that trend."

Next steps. ODMRDD administrators want to help the centers' staff find other state jobs or retrain them so they will be able to provide services in the community. Taft also asked the department to join forces with the state's development department and work with community leaders to propose new roles for the Springview and Apple Creek facilities that will be closed.

FMI: The Report of the MR/DD Developmental Center Closure Commission is attached.